

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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JOHNNY N. MACIAS,

Plaintiff(s),

vs.

READY PAC, INC.; US DEPARTMENT
OF AGRICULTURE;
WAL-MART STORES,

Defendant(s).

2:08-CV-0037-RLH-RJJ

ORDER
(Motion to Amend-#14)

Before the Court is Plaintiff's Motion to Amend (#14, filed February 6, 2008). Defendant Ready Pac Produce, Inc. filed its Opposition (#17) on February 25, 2008. Defendant Wal-Mart Stores, Inc., filed a Joinder to Ready Pac Produce, Inc.'s Opposition (#19) on the same day. No Reply has been received. The Motion will be denied.

Plaintiff attempts to amend his complaint by filing amendments to three pages, along with a letter from an insurance adjuster, his letter to the insurance adjuster, and a purported "food safety article" which is a newspaper article about an attorney in Seattle who successfully sued Jack in the Box for an E-Coli outbreak.

The news article is inadmissible and immaterial and irrelevant. Letters to and from the insurance adjuster are inadmissible and immaterial and irrelevant.

Federal Rule of Procedure 15 and the Rule 15-1 of the Local Rules of Practice for the United States District Court for the District of Nevada govern amendments.

1 Local Rule 15-1(a) requires that, "Unless otherwise permitted by the court, the
2 moving party shall attach the proposed amended pleading to any motion to amend so that it will be
3 complete in itself without reference to the superseding pleading. An amended pleading shall
4 include copies of all exhibits referred to in such pleading."

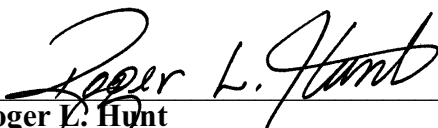
5 Plaintiff has only attached three pages from the original complaint. The Local Rule
6 requires that he attach a complete amended complaint together with all exhibits that are to be
7 attached to the amended complaint. Plaintiff has failed to comply with the Local Rule and his
8 motion must be denied for that reason alone.

9 However, there are more important reasons for denial of the motion to amend. First,
10 this Court has, by separate order, granted the dismissal of Defendants Ready Pac Produce, Inc. and
11 Wal-Mart Stores, Inc. on the ground that this action does not meet the criteria for an action pursuant
12 to 42 U.S.C. § 1983 and therefore does not state a cause of action upon which relief can be granted.
13 *Fed. R. Civ. P. 12(b)(6)*.

14 Second, Fed. R. Civ. P. 15 provides that leave to amend should be liberally granted
15 when justice so requires. Here, justice does not require the amendment. In fact, the requested
16 amendment would be futile, as it does not cure the defects of the original complaint. Defendants
17 Ready Pac and Wal-Mart do not act under the color of law; the U.S. Department of Agriculture acts
18 under federal, not state law; and, none of the parties are persons as anticipated by Section 1983.

19 IT IS THEREFORE ORDERED that Plaintiff's Motion to Amend (#14) is DENIED.

20 Dated: March 12, 2008.

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23 **Roger L. Hunt**
24 **Chief United States District Judge**
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